

**STATE OF MICHIGAN
SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

DWAYNE EDMUND WILSON,

Defendant-Appellee.

Supreme Court
Case No. 154039

Court of Appeals
Case No. 324856

Circuit Court
Case No. 09-2637-FC

**PEOPLE'S SUPPLEMENTAL BRIEF
PROOF OF SERVICE**

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STATEMENT OF QUESTIONS PRESENTED

ISSUE I

DOES THE PLAIN LANGUAGE OF MCL 750.227B REQUIRE THE TWO PRIOR CONVICTIONS TO ARISE FROM SEPARATE INCIDENTS?

People's Answer: "No"

Defendant's Answer: "Yes"

ISSUE II

IF MCL 750.227B DOES NOT REQUIRE THE TWO PRIOR CONVICTIONS ARISE FROM SEPARATE INCIDENTS, SHOULD PEOPLE V STEWART BE OVERRULED?

People's Answer: "Yes"

Defendant's Answer: "No"

STATEMENT OF STATUTE INVOLVEDMCL 750.227b (1)

A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The Defendant was convicted of Felony-Firearm and was sentenced as third Felony-Firearm offender. The Defendant's previous convictions for Felony-Firearm arose from a single transaction. The People argued to the Trial Court that the plain language of MCL 750.227b allows for such a sentence. (Tr. 11/19/14 at 41-44). The Defendant argued that the sentence was improper pursuant to *People v Stewart*, 441 Mich 89; 490 NW2d 327 (1992), which relied on *People v Preuss*, 436 Mich 714; 461 NW2d 703 (1990) for its rationale and holding. In response, the People argued that *Preuss* was overruled by *People v Gardner*, 482 Mich 41; 753 NW2d 78 (2008), thus the rationale from *Preuss* no longer supported the holding from *Stewart*.

The Trial Court sentenced the Defendant as a third Felony-Firearm offender. (Tr. 11/19/14 at 94). The Defendant appealed the sentence to the Court of Appeals. The Court of Appeals held that *People v Stewart* had not been overruled and that all inferior courts are bound to follow *Stewart* until it is overruled by the Michigan Supreme Court. This Honorable Court granted oral argument on whether to grant the application or take other action. This Court also ordered supplemental briefing on whether MCL 750.227b(1) requires two prior convictions to arise from separate incidents to trigger the 10 year penalty; and, if not, whether this Court should overrule *People v Stewart*. Accordingly, the People respectfully request that this Honorable Court **REVERSE** the decision of the Court of Appeals, overrule *People v Stewart*, and **REINSTATE** Defendant's sentence as a third Felony-Firearm offender.

ISSUE I

NOTHING IN THE PLAIN LANGUAGE OF MCL 750.227B REQUIRES THE TWO PRIOR CONVICTIONS TO ARISE FROM SEPARATE INCIDENTS.

STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo. *People v Schaefer*, 473 Mich 418, 427; 703 NW2d 774 (2005) .

ARGUMENT

“The first step when interpreting a statute is to examine its plain language, which provides the most reliable evidence of intent.” *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014). If the statutory language is unambiguous, no further judicial construction is required or permitted. *Id.* The threshold issue is whether the sentencing court could include the two 1997 felony firearm convictions from the same incident as a basis of enhancement under the felony firearm statute. Under MCL 750.227b(1), “[u]pon a third **or** subsequent conviction [of felony firearm], the person **shall** be imprisoned for 10 years.” (Emphasis added).

However, despite the statute’s unambiguous language requiring only two “convictions”, this Court added an additional requirement in 1992. This Court ruled that both prior felony firearm convictions must arise from separate criminal incidents before enhancement to a third offender. *People Stewart*, 441 Mich 89, 95; 490 NW2d 327 (1992). Yet, the Court explicitly relied upon the recently overruled case of *People v Preuss*, 436 Mich 714; 461 NW2d 7 (1990)

(overruled by *People v Gardner*, 482 Mi 41, 61; 753 NW2d 78 (2008)), in adding the separate-incident requirement. *Stewart*, 441 Mich at 94-95

In 2008, the Michigan Supreme Court overruled *Pruess* and, consequently, demolished the entire underpinning of the separate-incident requirement in *Stewart*. *Gardner*, supra. In *Gardner*, the Supreme Court revisited whether each felony conviction from a single incident could individually enhance a person's habitual status. *Id.* at 47. The Court overruled *Pruess* and found that each felony conviction out of a single transaction may increase a defendant's habitual status. *Id.* at 95. This Court concluded that the holdings of *Stoudemire* and *Pruess* directly contradicted the plain text of the statutes. *Id.* at 44. Therefore, the Court overruled these cases. *Id.* The unambiguous statutory language directs courts to count each separate felony conviction that preceded the sentencing offense, not the number of criminal incidents resulting in felony convictions. *Id.* Thus, this Court must look to the plain meaning of the felony firearm statute in determining whether the legislature intended enhancement only for separate incidents.

The Defendant argues that the *Gardner* decision does not equate to *Stewart* because the statutory text of the habitual statutes differ in one important aspect: the language "any combination of". However, the *Gardner* Court stated:

Nothing in the statutory text suggests that the felony convictions must have arisen from separate incidents. To the contrary, the statutory language defies the importation of a same-incident test because it states

that *any combination* of convictions must be counted.
[*Id.* at 51].

Thus, the Gardner Court first determined that the language of the statute did not suggest a separate incident requirement. Then the Court determined the “any combination” language reinforced that holding.

The plain language of the text makes it clear that the requirement requires a **third** or subsequent conviction. Here, there is no doubt that the Defendant’s current felony firearm conviction is his third such conviction¹. The statute does not require a “third, separate conviction” or “convictions not arising from the same incident”. In fact, like the analysis of the habitual statute in *Gardner*, nothing in the statutory language requires separate temporal incidents. Indeed, the language simply requires a third conviction. This Court is not permitted to add language to the statute when the plain language is unambiguous. *Ter Beek, supra*.

¹ His prior convictions were for two counts of felony firearm attached to two counts of felonious assault against two separate victims. The statute could simply not be intended to reward a Defendant for being economical by assaulting two victims at the same time.

ISSUE II

BECAUSE MCL 750.227B DOES NOT REQUIRE THE TWO PRIOR CONVICTIONS ARISE FROM SEPARATE INCIDENTS, PEOPLE V STEWART SHOULD BE OVERRULED.

ARGUMENT

When this Court determines that a case has been wrongly decided, as This Court should with regard to Stewart, it must next determine whether it should overrule that precedent. The application of stare decisis is generally the preferred course, because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. *People v Tanner*, 496 Mich 199, 250; 853 NW2d 653 (2014). However, stare decisis is a principle of policy rather than an inexorable command, and the Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned. *Id.*

This Court has discussed the proper circumstances under which it will overrule prior case law. When performing a stare decisis analysis, this Court should review whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision. *Id.* at 250-251. As for the reliance interest, the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental to everyone's

expectations that to change it would produce not just readjustments, but practical real-world dislocations. *Id.* at 251.

As the *Gardner* Court aptly stated when deciding to overrule *Preuss*:

Stare decisis is not to be applied mechanically to forever prevent the Court from overruling earlier erroneous decisions determining the meaning of statutes. Rather, if a case was incorrectly decided, we have a duty to reconsider whether it should remain controlling law. In doing so, we review whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision. These criteria weigh in favor of overruling *Stoudemire* and *Preuss*.

Most significantly, the same-incident test has not created reliance interests that will be thwarted by overruling *Stoudemire* and *Preuss*; overruling these cases will not cause significant dislocations or frustrate citizens' attempts to conform their conduct to the law. To have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event. The nature of a criminal act defies any argument that offenders attempt to conform their crimes--which by definition violate societal and statutory norms--to a legal test established by *Stoudemire* and *Preuss*. Moreover, to the extent that these cases implicate reliance interests, such interests weigh in favor of overruling them. Michigan citizens and prosecutors should be able to read the clear words of the statutes and expect that they will be carried out by all in society, including the courts.

We also note that the factor of practical workability bears little on our decision to overrule our previous erroneous interpretations of the habitual offender laws. The Legislature's clear directive to count each felony is no less workable--and indeed is arguably simpler to apply in practice--than the current, judicially imposed same-incident rule. [*Gardner, supra* at 61-62; internal citations and quotations omitted]

Thus, for the reasons quoted above, This Court must follow the path begun by *Gardner* and overrule *Stewart*.

The Defendant argues that *Stewart* should not be overruled because the legislature has the power to amend or repeal laws if they find court interpretations of those laws are inconsistent with the legislative intent. (Def Supp Brief at 19). However, legislative silence cannot and should not be a bar to correcting a prior erroneous holding.

The fact that the legislature has not repudiated *Stewart* should not be considered the legislature's implied consent of the *Stewart* holding. As stated in *Helvering v Hallock*, 309 US 106, 119 60 S Ct 444, 84 L ed 604 (1940),

To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities. Congress may not have had its attention directed to an undesirable decision; and there is no indication that as to the *St. Louis Trust* cases it had, even by any bill that found its way into a committee pigeon-hole. Congress may not have had its attention so directed for any number of reasons that may have moved the Treasury to stay its hand. But certainly such inaction by the Treasury can hardly operate as a controlling administrative practice, through acquiescence, tantamount to an estoppel barring reexamination by this Court of distinctions which it had drawn. Various considerations of parliamentary tactics and strategy might be suggested as reasons for the inaction of the Treasury and of Congress, but they would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle.

Indeed, this Court has stated that "It would require very persuasive circumstances enveloping congressional silence to debar this court from re-

examining its own doctrines. It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law. We do not think under the circumstances of this legislative history that we can properly place on the shoulders of Congress the burden of the court's own error." *Park v Appeal Bd. of Michigan Employment Sec. Com.*, 355 Mich 103; 94 NW2d 407 (1959), quoting *Helvering, supra*.

Furthermore, it has been the rule in Michigan since at least *Donajkowski v Alpena Power Co*, 460 Mich 243, 261; 596 NW2d 574 (1999), that the doctrine of legislative acquiescence is not recognized in this state. As noted in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 177-178 n 33; 615 NW2d 702 (2000), the legislative acquiescence doctrine "is a highly disfavored doctrine of statutory construction; sound principles of statutory construction require that Michigan courts determine the Legislature's intent from its words, not from its silence." See, e.g., *Donajkowski; People v Borchard-Ruhland*, 460 Mich 278, 286; 597 NW2d 1 (1999); *Robinson v Detroit*, 462 Mich 439, 466; 613 NW2d 307 (2000); *Nawrocki, supra*; *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 502; 638 NW2d 396 (2002); *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 760; 641 NW2d 567 (2002); *People v Hawkins*, 468 Mich 488, 506-507; 668 NW2d 602 (2003); *Neal v Wilkes*, 470 Mich 661, 668 n 11; 685 NW2d 648 (2004); *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 592; 702 NW2d 539 (2005); *Grimes v Mich. DOT*, 475 Mich 72, 84; 715 NW2d 275 (2006); *People v Anstey*, 476 Mich 436, 445; 719 NW2d 579 (2006); *Paige v Sterling Hts*, 476 Mich 495, 516; 720 NW2d 219 (2006).

Failure of the legislature to act does not require this Court to continue to use law that adds a separate incident requirement that the plain language of the felony firearm statute never contained. The Defendant's felony firearm conviction is undeniably his third conviction and, as such, this Court must overrule *Stewart*.

RELIEF REQUESTED

Accordingly, the People respectfully urge this Honorable Court to **GRANT** this Application, **REVERSE** the ruling of the Court of Appeals, and **REINSTATE** Defendant's Felony Firearm sentence.

Respectfully Submitted,

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